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Supreme Court, U.S.
FILED
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No. _____

In the Supreme Court of the United States

Originally submitted: January 4, 2011
Resubmitted: March 15, 2011

Kathy Ann Garcia-Lawson,
Petitioner,
v.
Jeffrey P. Lawson
Respondent,
On Petition for Writ of Certiorari
To the United States Court of Appeals for the Eleventh Circuit
USCA Case Number 10-12369
On Appeal from US District Court Case 9:10-cv-80374-KAM (SD Fla)

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

Whether this Court should apply "strict scrutiny" to review, reassess and overturn its own old (1966-1975) judicially formulated policy of construing 28 U.S.C. §1443 in a racially discriminatory fashion, albeit a "positive" or "affirmative-action" type of discrimination, when this policy of pro-minority racial discrimination in interpretation of the removal statute is not justified by Congressional language in the statute, nor consistent with this Court's "equal protection" jurisprudence since 1978, which invalidate racial discrimination of any kind except where such discrimination is the most narrowly tailored means to a compelling governmental end?

Are judicial constructions of Congressional statutes subject to "strict scrutiny" review generally?

Should Civil Rights Removal be available to correct systematic abuses in the state courts resulting in a judicial farce whereby 99.9-100% of all final outcomes are certainly predictable (i.e. predetermined) in certain types of cases, for example, dissolution of marriage?

CERTIFICATE OF INTERESTED PERSONS
Per Supreme Court of the United States Rule 14b

List of Persons having an interest in the outcome of this case:

COLBATH, JUDGE JEFFREY J.

GARY, JUDGE WILLIAM L.

LAWSON, ALEXANDRA (a minor)

LAWSON, JEFFREY P. (petitioner below)

MARRA, JUDGE KENNETH

OFTEDAL, JUDGE RICHARD L.

STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL

MALLORY LAW GROUP, Traded as EARL K. MALLORY

PALM BEACH COUNTY CIRCUIT COURTS

FLORIDA 1st & 15th JUDICIAL CIRCUITS

FLORIDA 1st & 4th District Courts of Appeal

CLERKS OF COURT and other Judicial Officers of the STATE of FLORIDA

LEON COUNTY/CIRCUIT COURT

FREIMAN, PEYTON YATES,
Trustee of Lawson Family Trust

LAWSON, DR. KATHY ANN GARCIA-
(respondent/removing party/appellant below)

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28 U.S.C. §§1331 & 1441

28 U.S.C. §§1343

28 U.S.C. §1443

28 U.S.C. §1447(d)

42 U.S.C. §§1981-1982

42 U.S.C. Chapter 21

438 U. S. 265

515 U.S. 200, 227

First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution

Introduction

Judge Richard L. Oftedal entered a final order dissolving Petitioner Kathy Ann Garcia-Lawson's marriage to Jeffrey P. Lawson on April 29, 2010, in the Florida Fifteenth Judicial Circuit in and for Palm Beach County, after U.S. District Judge Kenneth A. Marra remanded this case from U.S. District Court on March 16, 2010 and a denied Petitioner's Rule 59(e) Motion on April 19, 2010. Petitioner timely appealed as allowed by 28 U.S.C. §1447(d) and the Eleventh Circuit denied her appeal on October 6, 2010.

This Petition for Writ of Certiorari is timely because it was originally placed for next day delivery by Federal Express on the 90th day, January 4, 2011, after the entry of said order, although the mandate was not entered until November 17, 2010. Per instructions from Mr. Clayton Higgins, a clerk of this court, this Petition has been modified and resubmitted within 60 days on 3-15-11, as allowed by the rules and Mr. Higgins' instructions.

Petitioner asserts and asks this Court to overturn the judicially formulated policy and practice of refusing to allow and/or remanding Civil Rights Removals under 28 U.S.C. §1443. This Court established this policy or practice by a series of 3 cases decided 1966-1975. Petitioner asks for review, reassessment, and reversal of these cases and the national policy of remanding cases removed on civil rights grounds on the grounds that this series of 3 cases contradicts all subsequent jurisprudence on

equal protection. Specifically, Petitioner asserts and asks this Court to determine, hold, and rule that the judicially formulated policy and application of Civil Rights removal under 28 U.S.C. §1443 must be subjected to "strict scrutiny" because it allocates the benefits and advantages of removal to Federal Court on grounds of civil rights violations in a racially discriminatory manner and without respect for the broad language of the statute.

Petitioner asks this Court to review its own (1966-1975) decisions in light of its equal protection jurisprudence of 1978-the present time, which will require the invalidation of the racially discriminatory policy of construing the broad civil rights removal statute only to apply to an extremely narrow range of cases involving express statutory discrimination by race; Federal Courts have a duty to review all state court proceedings where the outcome is predetermined by state statutory policy, not merely those where state laws concerning race lead to predetermined outcomes.

Jeffrey Lawson filed a petition for dissolution of his Florida marriage from Kathy Ann Garcia-Lawson. Kathy was repeatedly refused the right in court to prove that in the state of Florida, there is only one possible outcome of such a petition for dissolution: the petitioner (in this case Jeffrey) always wins and the marriage is always dissolved. For the past 35 years, there is no record known to the Petitioner of a Florida Petition for Dissolution of marriage ever being denied. Petitioner contends that

this statistically testable, verifiable, invariate pattern constitutes proof beyond reasonable doubt of a "rigged" non-judicial system functioning without due process of law. According to the plain language of the Congressional statutory mandate, as well as the non-racially biased language of all relevant U.S. Supreme Court case, all such cases and situations should be removable to Federal Court under 28 U.S.C.§1443.

Summary of the Case

In the Fifteenth Judicial Circuit of Palm Beach County, in February 2005, Jeffrey Lawson filed for a divorce from Kathy Ann Garcia-Lawson. Dr. Kathy Ann Garcia-Lawson holds a Ph.D. in psychology and believes as a matter of professional study and religious ethics that "free and easy" divorce is psychologically injurious to all parties involved and to society as a whole, especially on a transgenerational basis. Furthermore, Garcia-Lawson initiated her own research and found the statistical anomaly of 100% certainty in the outcome of divorces, and questioned the constitutionality of such a "judicial" process, where the outcome (dissolution granted) is almost as judicially predetermined as the conclusion that "the sun also ariseth, and the sun goeth down."

Dr. Kathy Ann Garcia-Lawson's attempts by motion and amendment of pleadings to present her research and findings regarding the impossibility of any outcome of the trial save for granting the divorce

petition were repeatedly refused by Judge Richard L. Oftedal.

Realizing that the State Courts entrusted with "Domestic Relations" jurisdiction would never hear her, Dr. Garcia-Lawson then filed a Notice of Removal from the Florida Fifteenth Judicial Circuit to the United States District Court for the Southern District of Florida, from which her Notice of Removal was rejected and the dissolution proceeding remanded by Judge Kenneth A. Marra, ultimately on the sole grounds of this United States Supreme Court's judicially mandated but constitutionally intolerable and unsustainably policy of positive discrimination: the inappropriate racial gloss imposed by the Court and upon the racially-neutral language of 28 U.S.C. §1443, which guarantees the right to remove a case from state courts to federal courts if equal protection of the law is denied to certain classes of defendants in an automatic and predictable manner. Judge Marra's acceptance and implementation of this unthinkable but judicially sanctioned racially discriminatory application and interpretation of this statute (affirmed by the Eleventh Circuit in Atlanta on October 6, 2010) follows Supreme Court precedents laid down between 1966-1975, but is inconsistent with the "strict scrutiny" analysis of equal protection questions developed by the U.S. Supreme Court from 1978-2002, and used in the present time. Denial of removal enjoys special status among removals immediately appealable per the removal

amendments to Civil Rights Act of 1964 (42 U.S.C. Chapter 21). Petitioner submits that Congress showed thereby its serious intent to give the protections afford by Civil Rights Removal the fullest and broadest implementation available under the plain language of the statute.

Petitioner submits that this U.S. Supreme Court must now once and for all reevaluate and overrule its own racially discriminatory precedents denying Garcia-Lawson her constitutional and statutory (42 U.S.C. §§1981-1982) rights to equal access to the courts and to offer and present evidence supporting state court infringements upon her rights, and ultimately the Supreme Court must reverse and reinstate her removal from the state court and its predetermined outcome to the U.S. District Court with instructions that all state statutes and judicial customs, practices, and policies having the force and effect of mandatory and predeterminative, outcome dispositive, law be invalidated and removed.

The federal judicial gloss or construction of 28 U.S.C. §1443 has created an unconstitutional policy of automatic and non-discretionary racial discrimination enforced by the courts. This policy is not only unconstitutional in light of Supreme Court Jurisprudence (*Bakke* through *Bollinger*), but is anti-democratic in that it is effectively anti-majoritarian, and in fact completely derogatory of all civil rights issues currently viable in the United States. For this reason, the Court should see and recognize that

tailored and most constitutionally appropriate means to achieving this objective.

Kathy Ann Garcia-Lawson's central contention in this Petition for Writ of Certiorari is simply this: the federal judicial policy of automatic and non-discretionary racial discrimination in the allowance or enforcement of civil rights removal (28 U.S.C. §1443) and equal access to the courts to enforce contract and protect property (42 U.S.C. §§1981-1982) as invoked and applied by judge Kenneth A. Marra violates equal protection and must not be allowed to survive strict scrutiny.

Jurisdiction

(A) Kathy Ann Garcia-Lawson (hereinafter "Petitioner") filed her Second Notice of Removal (Appendix, Excerpts of Record: Tab 2) on March 10, 2010 in response to three orders entered by Judge Richard L. Oftedal (Exhibits C, F, H, I, K & L at pages 37-40, 74, 86-88, 89-91, 112, and 115 of 119 of Document 1-1 [Notice of Removal] Entered on FLSD Docket 03/10/2010 in Case 9:10-cv-80374-KAM].

(B) Petitioner filed her Second Notice of Removal [Document #1 in Case 9:10-cv-80374-KAM, pursuant to 28 U.S.C. §1443(1)]

(C) Alleging that the specific four orders C, F, I, K, & L cited, all filed within the 30 days prior to March 10, 2010, irrefutably confirmed that Judge Richard L. Oftedal had no intention of allowing the Petitioner to raise any constitutional defenses to the

(D) Petition for Divorce against her when he wrote on February 10, 2010: "the court will not address any constitutional issues or attacks upon Chapter 61 [of the Florida Statutes] at the final hearing scheduled on February 26, 2010." 9:10-cv-80374-KAM, Document 1, Page 39 of 50, Entered on FLSD Docket 03/10/2010.

(E) Judge Marra's Order and Opinion Remanding Case to State Court entered on FLSD Docket 03/16/2010 (less than one week after removal— See Appendix: Excerpts of Record, Tab 3) was a "final decision of a District Court" from which appeal may be taken under 28 U.S.C. §1291.

(F) 28 U.S.C. §1447(d) provides the statutory basis for this Court's special jurisdiction over Judge Marra's Order and Opinion Remanding Case and within the language of the statute "by appeal or otherwise" was also subject to post-trial motions. Petitioner Kathy Ann Garcia-Lawson accordingly, within 28 days of March 16, on April 13 filed her Rule 59(e) Motion to Amend and Alter Judgment and Motion for Revocation of Remand. (Document 8, file stamped by the U.S. District Clerk on April 13, 2010 but Entered on FLSD Docket 04/14/2010 in Case 9:10-cv-80374-KAM, See Appendix: Excerpts of Record at Tab 6).

(G) Petitioner Rule 59(e) Motion focused on Judge Kenneth A. Marra's "Manifest Error" of failing or refusing to treat and analyze 28 U.S.C. §1443(1) as an Exception to the "Well-Pleaded Complaint" Rule regarding Federal Question Removal under

28 U.S.C. §§1331 & 1441.

(H) Judge Marra appeared to at least conditionally accept that "Garcia-Lawson is correct that an application of the well-pleaded complaint rule is inapplicable to removal under 28 U.S.C. §1443, the civil rights removal statute;" he still concluded that "this case is not properly removable under that statute," because of the application of the first prong of the "*Johnson*" rest, namely that: *"First it must appear that the right allegedly denied arises under federal law providing for specific civil rights stated in terms of racial equality."* Case: 10-cv-80374-KAM, Document 9, Entered on FLSD Docket 04/19/2010, Page 2 of 5, see Appendix: Excerpts of Record, under Tab 7.

(I) In summary, BUT FOR the "race factor" –the judicial gloss imposed on a racially neutral statute, the District Court had removal jurisdiction over the state court action pursuant to 28 U.S.C. §§1343 (Civil Rights Jurisdiction) asserted by removal from state court pursuant to 28 U.S.C. §1443(1), which is a congressionally mandated statutory exception to the "well-pleaded complaint" rule applied to ordinary "Federal Question" Removals" under 28 U.S.C. §1441(a) pursuant to 28 U.S.C. §1331: Petitioner asks: does race-based discrimination operate to deny her of access to the courts, when all other elements of civil rights removal are present?

(J) It is this subject of racial equality which serves as the focus of Kathy Ann Garcia-Lawson's

(K) present, Second Appeal of a Judge Marra Order of Civil Rights Remand: Petitioner asks that this court review the racial classification and racial discrimination scheme set up and imposed by the Supreme Court of the United States in *Georgia v. Rachel, Greenwood v. Peacock*, and *Johnson v. Mississippi* as a Federal law predating *Univ. of Cal. v. Bakke*, 438 U. S. 265, (1978), *Richmond v. Croson*, 488 U.S. 469 (1989) and *Adarand Contractors v. Pena*, 515 U.S. 200, 227 (1995) and to apply the "strict scrutiny" test to this race-based inequality in the application and enforcement of the law relating to civil rights removal under 28 U.S.C. §1443.

(L) Judge Marra not only entered his remand ***sua sponte*** less than a week after removal, but also denied Petitioner's (Removing Defendant's Rule 59(e) Motion

(authorized by 28 U.S.C. §1447(d) on April 19, 2010 without awaiting Jeffrey Lawson's response.

(M) In that Jeffrey P. Lawson filed no motions for relief with the Court in this case, and has by writing indicated that he does not intend to file anything with this court, Kathy Ann Garcia-Lawson has herein appealed pursuant to 28 U.S.C. §1447(d) from an order which disposed of all parties claims to the United States Court of Appeals for the 11th Circuit, in which jurisdiction lies, as noted above, under 28 U.S.C. §1291.

Judge Richard L. Oftedal, by his express invocation and application of Florida Law (Chapter 61), showed and confirmed that by the operation of a pervasive

and explicit state law that Kathy Ann Garcia-Lawson's rights to petition for redress of the grievances embodied in her "constitutional issues or attacks" and assertions of her right to due process of law, to be free of self-incrimination, as well as her right to jury trial, would inevitably be denied, infringed, and violated [and all of Kathy Ann Garcia-Lawson's asserted rights ultimately were denied, in the ludicrous trial which Judge Oftedal conducted on February 26, 2010 and in the Final Judgment of Dissolution which he entered on April 29, 2010] by the very act of bringing the defendant to trial in the state (15th Florida Judicial Circuit, Domestic Relations) court.

Announcing his policy approach to dissolution in general and petitioner's case in particular, Judge Richard L. Oftedal made (in writing) the absolute and conclusive, prejudicial, and (to any American seemingly unthinkable) statement that "the court will not address any constitutional issues or attacks upon Chapter 61 at the final hearing scheduled on February 26, 2010," so that there would be no possibility of "gain or los[ing]" these issues "by entry of a final judgment or decree" such as the one finally entered.

(N) Judge Richard L. Oftedal ruled that Florida Marital Dissolution law mandated that he award Jeffrey P. Lawson's Petition for Divorce, and ignore all of Petitioner's assertions of state and federal constitutional rights, including but not limited to those secured by 42 U.S.C. §§1981 & 1982, but also

(O) the First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution.

(P) Petitioner Kathy Ann Garcia-Lawson admits at this point in time and litigation, that Judge Richard L. Oftedal's application of Chapter 61 andother relevant provisions of Florida statutory law is consistent with the customs, practices, and policies illegitimately enforced under color of unconstitutional law by all the Circuit Courts and Circuit Court Judges and Clerks of the State of Florida, but this state-wide custom, practice and policy REINFORCES AND SUSTAINS, rather than undermines, the use and invocation of 28 U.S.C. §1443(1) removal under the above-cited language of *Greenwood v. Peacock* relating to the Second Prong of the Two Prong Test of *Johnson v. Mississippi,* namely that "Second, it must appear, in accordance with the provisions of §1443(1), that the removal Petitioner is "denied or cannot enforce" the specified federal rights in the courts of the state." (Appendix: Excerpts of Record under Tab 7: Case 9:10-cv-80374-KAM, Document 9, Entered on FLSD Docket 04/19/2010, Page 2 of 5.)

(Q) Petitioner contends that Judge Richard L. Oftedal's infringement on her rights were in no sense isolated, but were (at least in the current general interpretation and application of the law) absolutely required by Florida state customs, practices, and policies to be violated programmatically and without variance in one single, predetermined outcome. *Virginia v. Rives* unreasonably restricts the use of

the removal statute to what can only be called a trivial de minimis minority of the possible cases covered, were the courts to give full force and effect to the majestic and broad language which Congress democratically enacted and adopted as law. *Virginia v. Reeves* followed closely in *Greenwood v. Peacock* (1966) and *Mississippi v. Johnson* (1975), but was never evaluated in light of *Richmond v. Croson* or *Adarand v. Pena*.

(R) Florida statutes are the statutory programs which render all dissolution actions in Florida nugatory: there is only one possible outcome of the central question, and that is dissolution of the marriage and destruction of the family as a unit.

Issues Presented for Review

I. Does 28 U.S.C. Section 1443 Constitute an exception to the "well-pleaded complaint" rule regarding removal?

II. Have the courts properly implemented special status evident in Congressional intent by a narrow construction of 28 U.S.C. Section 1443 in light of 28 U.S.C. Section 1447(d)?

III. Has Kathy Ann Garcia-Lawson adequately plead the certainty of denial of her federal rights according to the letter of state law as officially applied by the state courts?

IV. What is the congressionally intended role of the Federal courts in supervising the enforcement of federal rights in the State Courts: the relationship of

civil rights removal under 28 U.S.C. Section 1443 to civil rights injunctions under 42 U.S.C. Sections 1983 and 1988(a), as (originally) properly enunciated and interpreted but since then improperly applied line of cases beginning with ***Dombrowski v. Pfister*** (1965), ***Younger v. Harris*** (1971), and ***Mitchum v. Foster*** (1972), of which extremely important civil rights trilogy only ***Younger v. Harris*** (the only case of the three to decide against injunction) is ever now remembered or cited?

Reasons to Grant this Petition for Certiorari

Petitioner requests this petition be granted; the removal of the precedent of a race-based interpretation of a racially neutral statute is imperative. Congress powerfully chose and broadly framed the language of 28 U.S.C. §1443 and underlined its special significance by enacting 28 U.S.C. §1447(d) (granting special status on appeal to all removals under §1443). Petitioner Kathy Ann Garcia-Lawson does not claim it was her prerogative right, or indeed any citizen's, to remove every case to Federal Court merely by alleging a violation of civil rights, no matter how egregious. Rather, consistent with the completely neutral, non-racial and colorblind language of the Civil Rights Removal statute and even the original cases construing the same (especially but not limited to *Greenwood v. Peacock*), a Defendant should be permitted to remove to Federal Court ONLY "in the rare situations where

it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court." 384 U.S. at 828, 86 S.Ct. at 1812, 16 L.Ed.2d at 957. Kathy Ann Garcia-Lawson's rights were denied upon Jeffrey P. Lawson filing the petition for dissolution of marriage; it is absolutely certain that only one outcome was possible.

Conclusion and Prayer

Wherefore, to breathe full life into every word of the Civil Rights Removal Statute according to the broad and expansive language adopted by Congress, and to eliminate a shameful judicially formulated policy of racial discrimination and irrational, wasteful affirmative action, which is subject to but cannot possibly survive strict scrutiny,

Petitioner Kathy Ann Garcia-Lawson prays that this Court will grant her Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, and thereby reconcile two radically contradictory and inconsistent lines of cases in this Honorable Courts own jurisprudence which cannot possibly peacefully or rationally coexist with one another. The Civil Rights Removal Statute must be given its full force, and the judicial policy of racially discriminatory application and enforcement must be once and for all terminated.

Praying that this Court grant her Petition for Writ of Certiorari, this Petition is hereby

Respectfully submitted,
March 15, 2011

By: _____

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APPENDIX

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(2)

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v.

Jeffrey P. Lawson

Respondent,

On Petition for Writ of Certiorari

To the United States Court of Appeals for the Eleventh Circuit

USCA Case Number 10-12369

On Appeal from US District Court Case

9:10-cv-80374-KAM (SD Fla.)

Appendix

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Table of Contents – Appendix

U.S. District Court Southern District of Florida, *Jeffrey P. Lawson v. Kathy Ann Garcia-Lawson*, CASE NO. 10-80374-CIV-MARRA/JOHNSON, ORDER AND OPINION REMANDING CASE TO STATE COURT, 3/16/10..... a-1

U.S. District Court Southern District of Florida, *Jeffrey P. Lawson v. Kathy Ann Garcia-Lawson*, CASE NO. 10-80374-CIV-MARRA/JOHNSON ORDER DENYING RULE 59(e) MOTION 4/19/10..... a-5

U.S. Court of Appeals, 11th Circuit, *Jeffrey P. Lawson v. Kathy Ann Garcia-Lawson*, D.C. Docket No. 9:10-cv-80374-KAM, Appeal from the United States District Court for the Southern District of Florida, 10/6/10 ..... a-11

Fourth District Court of Appeal Case Docket, including the 3/7/10 filing of Kathy Ann Garcia-Lawson's

party has the burden of demonstrating the propriety of removal. *Diaz v. Shepard*, 85 F.3d 1502, 1505 (11th 1Cir. 1996). As the Court previously held in remanding the instant action to state court,

It is clear from a review of the removal documents that the state court dissolution of marriage proceeding is not one subject to removal under 28 U.S.C. § 1443. To the extent that Respondent is contending that the Florida dissolution of marriage statute is being applied in an unconstitutional manner, those issues are raised by way of defense to the dissolution petition. In order to be able to remove a case to federal court based upon a federal question, as Respondent attempts to do here, a substantial federal question must be presented "on the face of the complaint." *Hill v. BellSouth Telecommunications, Inc.*, 364 F.3d 1308, 1314 (11th Cir. 2004). The federal question cannot be raised by way of a defense asserted in the answer or raised in the petition for removal. *Gully v. First National Bank*, 299 U.S. 109, 113 (1936). The dissolution of marriage petition does not raise any federal question, and in particular, it does not raise one relating to the denial of "equal civil rights."

There is no valid legal basis for removal of this case to federal court. In fact, the removal is frivolous.

See case no. 09-81615-civ-Marra, DE 6 at 2-3, entered November 20, 2009. The State Court's February 8, 2010 order upon which Defendant Kathy A. Garcia-Lawson relies cannot provide the legal basis for removal of this five year old Florida divorce proceeding.

In addition, the Court has warned Defendant that "[t]he filing of any additional frivolous proceedings in

this Court which prevent or interfere with the orderly prosecution of the state dissolution proceeding will result in the imposition of sanctions." See id. at 3.

To the extent Defendant suggests that because of the undersigned's prior rulings, and comments made in connection with those rulings, the undersigned's recusal may be appropriate, Defendant's suggestion is rejected. As the United States Supreme Court has recognized, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion" to recuse a judge. *Liteky v. United States,* 510 U.S. 540, 555 (1994). Adverse rulings "can only in the rarest circumstance evidence the degree of . . . antagonism required" for recusal. *Id.*2 Furthermore, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, *or of prior proceedings,* do not constitute a basis for a bias or partiality motion unless they display a deep-seeded . . . antagonism that would make fair judgment impossible. *Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to . . . the parties, or their cases, ordinarily do not support a bias or partiality challenge." Id.* (emphasis added) Expressions of "impatience, dissatisfaction, annoyance, and even anger" are insufficient. *Id.* at 555-56. Nothing the undersigned has said or done in the two prior proceedings1 in which he was involved with Defendant comes close to meeting the standard for recusal.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows: 1. To the extent Defendant's Second Notice of Removal may be construed as

undersigned, the motion is legally deficient and **DENIED;** 2. This case shall be **REMANDED** to the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida;

3. The Clerk of this Court is hereby directed to forward a certified copy of this Order to the Clerk of the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida; 4. All pending motions are hereby **DENIED**, without prejudice, as moot;

1 The undersigned has another pending case involving Defendant in which she is the plaintiff. That case is in the pleading stage. Kathy Ann Garcia-Lawson v. Suntrust Mortgage, Inc., et al., Case No. 10-CV-80240-Marra/Johnson 35. The Court reserves jurisdiction of Defendant Kathy A. Garcia-Lawson solely for the purpose of considering whether to impose sanctions upon her for violating this Court's November 20, 2009 Order; and 6.

This case is CLOSED.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 15th day of March, 2010.

copies to: All counsel of record

KENNETH A. MARRA United States District Judge

Case 9:10-cv-80374-KAM
Entered on FLSD Docket 04/19/2010

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-80374-CIV-MARRA/JOHNSON

JEFFREY P. LAWSON,
Plaintiff,
v.
KATHY A. GARCIA-LAWSON,
Defendant.

ORDER DENYING RULE 59(e) MOTION

THIS CAUSE came before the Court on Defendant Kathy A. Garcia-Lawson ("Defendant" or "Garcia-Lawson") Rule 59(e) Motion to Amend and Alter Judgment and Motion for Revocation of Remand, filed April 13, 2010. [DE 8] The Court has reviewed the motion and the record, and is otherwise duly advised in the premises. As explained below, the instant motion is denied.

A motion for reconsideration is appropriate where (1) an intervening change in controlling law has occurred; (2) new evidence has been discovered; or (3) there is a need to correct clear error or prevent a manifest injustice. *Williams v. Cruise Ships Catering & Svc. Int'l*, N.V., 320 F.Supp.2d 1347, 1357-58 (S.D. Fla. 2004); *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994); see also 18 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 4478 (1981). In order to

reconsider a ruling, there must be a reason why the court should reconsider its prior decision, and the moving party must set forth facts or law of a "strongly convincing nature" to induce the court to reverse its prior decision. Id. The Court notes that reconsideration of a previous order is an extraordinary remedy to be employed sparingly. See Sussman, 153 F.R.D. at 694. Disagreement with the Court's ruling is an insufficient basis for reconsideration of a prior order. See, e.g., Z.K. Marine Inc. v. M/V Archigetis, 808 F.Supp. 1561, 1563 (S.D. Fla.1992) (A "motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made."); Burger King Corp. v. Ashland Equities, Inc., 181 F.Supp.2d 1366, 1370 (S.D. Fla. 2002).

Here, Garcia-Lawson's asserts that the "manifest error" that has occurred is that the Court has failed to treat her attempted removal of the underlying state court action under 28 U.S.C. § 1443(1) as an exception to the "well-pleaded complaint" rule regarding federal question removal. Even assuming that Garcia-Lawson is correct that an application of the well-pleaded complaint rule in inapplicable to removal under 28 U.S.C. § 1443, the civil rights removal statute, this case is not properly removable under that statute.

The United States Supreme Court has established that a removal petition under 28 U.S.C. § 1443(1) must satisfy a two-pronged test. See Johnson v. Mississippi, 421 U.S. 213 (1975); Georgia v. Rachel, 384 U.S. 780 (1966); City of Greenwood, Mississippi v. Peacock, 384 U.S. (1966). "First, it must appear

that the right allegedly denied arises under federal law 'providing for specific civil rights stated in terms of racial equality.' " Johnson, 421 U.S. at 219, quoting Georgia v. Rachel, 384 U.S. at 792. "Second, it must appear, in accordance with the provisions of § 1443(1), that the removal Petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of the State.' " Johnson, 421 U.S. at 219, quoting Georgia v. Rachel, 384 U.S. at 792. See also Walker v. State of Ga., 417 F.2d 5, 9 (5th Cir. 1969), ("It is the primary purpose of 1443(1) to remove from state courts groundless charges not supported by sufficient evidence when these charges are based on race and deny one his federally protected equal rights as guaranteed by Title II of the 1964 Civil Rights Act.").

Allegations of a denial of one's civil rights or one's right to equal protection of the laws are insufficient to support a removal under § 1443(1):

In her petition for removal of both suits Williams alleges that the trial of the suits separately and in the absence of several parties whom she deems "indispensable" violates her civil rights and entitles her to removal under § 1443(1). The short answer to this contention is that even assuming that Williams' allegations amount to a denial of her civil rights, that violation does not fall within the narrow set of civil rights claims which are removable under § 1443(1). Georgia v. Rachel, 384 U.S. 780 (1966); City of Greenwood v. Peacock, 384 U.S. 808 (1966). Removal under § 1443(1) is permissible only when a right conferred by a law providing for specific civil rights stated in terms of racial equality is denied or cannot be enforced in the state court. See Student Non-

allegedly denied her arises under a federal law providing for a specific right to racial equality. Garcia-Lawson's contentions have nothing to do with racial equality. Varney v. State of Ga., 446 F.2d 1368, 1369 (5th Cir. 1971) (affirming district court's summary remand of removal based upon 28 U.S.C. § 1343, where his contentions under the Fifth, Sixth, Eighth Fourteenth Amendments "have nothing to do with racial equality"). Accordingly, the Court need not advance to the second prong. See Robertson v. Ball, 534 F.2d 63, 66 (5th Cir. 1976) ("We need not advance to the second prong, since the removal petition filed by the Robertsons clearly failed to satisfy the first prong the federal rights claimed by the Robertsons do not arise under federal law 'providing for specific civil rights stated in terms of racial equality.'")(affirming remand of a grandparent visitation action removed pursuant to 28 U.S.C. § 1343).

Based upon the foregoing, the Court once again rejects Garcia-Lawson's assertion that this case was properly removed. Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant Kathy A. Garcia-Lawson's Rule 59(e) Motion to Amend and Alter Judgment and Motion for Revocation of Remand, filed April 13, 2010, is **DENIED.**

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 19th day of April, 2010.

copies to: All counsel of record
Kathy A. Garcia-Lawson, pro se

KENNETH A. MARRA
United States District Judge

[1] In Bonner v. City of Pritchard, 661 F.2d 1206, 1207 & 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent the decisions of the Fifth Circuit rendered prior to October 1, 1981.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
U.S. COURT OF APPEALS
No. 10-12369
Non-Argument Calendar

ELEVENTH CIRCUIT OCT 6, 2010
JOHN LEY CLERK
D.C. Docket No. 9:10-cv-80374-KAM
JEFFREY P. LAWSON,
Plaintiff-Appellee,
Versus
Kathy Ann Garcia-Lawson,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(October 6, 2010)

Before BLACK, PRYOR and MARTIN, Circuit Judges.

PER CURIAM: The plaintiff, Jeffrey P. Lawson, filed this divorce action in Florida state court against Kathy Ann Garcia-Lawson. Garcia-Lawson, proceeding pro se, Plaintiff-Appellee, removed the action to the Southern District of Florida under 28 U.S.C. § 1443.

The district court remanded the proceeding to state court concluding that removal jurisdiction under § 1443 did not exist. Garcia-Lawson now appeals.

I. "As a general rule, we cannot review a district court's decision remanding a case to state court." ***Hernandez v. Seminole Cnty., Fla.***, 334 F.3d 1233, 1235 (11th Cir. 2003); see also 28 U.S.C. § 1447(d) (providing that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise").

However, "[s]ection 1447(d) expressly excepts from its coverage certain equal civil rights cases removed under 28 U.S.C. § 1443." Hernandez, 334 F.3d at 1236 n.1 (quotation marks omitted); see also Cogdell v. Wyeth, 366 F.3d 1245, 1247 n.3 (11th Cir. 2004); Russell Corp. v. Am. Home Assur. Co., 264 F.3d 1040, 1044 n.2 (11th Cir. 2001); 28 U.S.C. § 1447(d) (stating that "[a]n order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise").

Title 28 U.S.C. § 1443(1) "permits a defendant in a civil state court action to remove the action to federal district court if the action is against a person who is denied or cannot enforce in the state courts a right under any law providing for equal civil rights of citizens of the United

States." ***Alabama v. Conley***, 245 F.3d 2 1292, 1295 (11th Cir. 2001) (quotation marks omitted). A removal petition filed under § 1443(1) must satisfy the two-part test set out by the Supreme Court in ***Georgia v. Rachel***, 384 U.S. 780, 86 S.Ct. 1783 (1966). "First, the petitioner must show that the right upon which the petitioner relies arises under a federal law 'providing for specific civil rights stated in terms of racial equality.'" ***Conley,*** 245 F.3d at 1295 (quoting ***Rachel***, 384 U.S. at 792, 86 S.Ct. at 1790)). "Second the petitioner must show that he has been denied or cannot enforce that right in the state courts." ***Id.***

Garcia-Lawson contends that the district court had removal jurisdiction under § 1443(1) over this divorce action because Florida's marriage laws violate her federal civil rights under the First, Fifth, Seventh, Ninth, and Fourteenth Amendments. The Supreme Court has explained that rights of "general application available to all persons or citizens" fall outside the scope of § 1443(1). ***Rachel***, 384 U.S. at 1790, 86 S.Ct. at 792; see also ***Johnson v. Mississippi,*** 421 U.S. 213, 219, 95 S.Ct. 1591, 1595 (1975) ("Claims that prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination, will

not suffice."); ***Conley,*** 245 F.3d at 1295–96. Removal is only authorized under § 1443(1) when the defendant is asserting rights "stated in terms of racial equality." Rachel, 384 U.S. at 792, 86 S.Ct. at 1790. None of the rights relied upon by Garcia-Lawson satisfy that criteria. See ***City of Greenwood v. Peacock***, 384 U.S. 808, 825, 86 S.Ct. 1800, 1811 (1966) (explaining that "the broad constitutional guarantees of the First Amendment" are not included within § 1443(1)); ***Conley***, 245 F.3d at 1295–96 (concluding that defendant's reliance "upon broad assertions under the Equal Protection Clause" was insufficient to support a valid claim for removal under § 1443(1)); Sunflower Cnty. ***Colored Baptist Ass'n v. Trustees of Indianola Mun. Separate Sch. Dist.***, 369 F.2d 795, 796 (5th Cir. 1966)[1] (stating that the "right to a fair trial and equal protection of the laws" does not support a valid claim for removal under § 1443(1)). For these reasons, the district court did not err by remanding Garcia-Lawson's case for lack of removal jurisdiction under § 1443(1).

AFFIRMED.

[1]In ***Bonner v. City of Prichard***, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

Fourth District Court of Appeal Case Docket

Case Number: 4D10-2540

Final Family Other Notice from Palm Beach County

KATHY ANN GARCIA-LAWSON, Ph.D vs. JEFFREY P. LAWSON

Lower Tribunal Case(s): 502005DR001269XXXXNB

03/13/2011 09:27

Date Docketed	Description	Date Due	Filed By	Notes
06/22/2010	Notice of Appeal Filed		Kathy Ann Garcia-Lawson, Ph.D , Pro Se - Appellant	
06/22/2010	order appealed			
06/23/2010	Acknowledgment Letter			
06/23/2010	Case Filing Fee			* Josephine D Garcia
09/17/2010	Show Cause: Lack of Prosecution, Initial Brief	10/02/2010		by 10/2/10
10/04/2010	RESPONSE TO ORDER TO SHOW CAUSE		Kathy Ann Garcia-Lawson, Ph.D , Pro Se Appellant	***TREATED AS A MOTION TO ABATE--SEE 10/14/10 ORDER***
10/14/2010	Miscellaneous Order			APPELLANT'S 10/4/10 RESPONSE IS TREATED AS A MOTION TO ABATE
10/14/2010	ORD-Grant Motion to Abate			PENDING DISPOSITION OF 4D10-039
01/05/2011	Stay w lvlted, case to proceed	01/25/2011		APPELLANT SHALL SERVE THE INITIAL BRIEF WITHIN 20 DAYS
01/24/2011	Received Records			(25) TWENTY-FIVE VOLUMES
01/24/2011	Received Exhibits			(4) FOUR ENVELOPES (ONE MARKED CONFIDENTIAL)
01/25/2011	Mot. for Extension of time to file Initial Brief		Kathy Ann Garcia-Lawson, Ph.D , Pro Se - Appellant	(M) (OR IN THE ALTERNATIVE)
01/25/2011	Motion For Rehearing/Interim Order		Kathy Ann Garcia-Lawson, Ph.D , Pro Se - Appellant	(M) OF 1/5/11 ORDER
02/03/2011	Order Granting EOT for Initial Brief	03/05/2011		30 DAYS
02/03/2011	Order Denying Rehearing Interim Order			(RECONSIDERATION OF 1/5/11 ORDER)
03/07/2011	Appellant's Initial Brief w/Appendix		Kathy Ann Garcia-Lawson, Ph.D , Pro Se - Appellant	(4)

4D10-2540

FOURTH DISTRICT COURT OF APPEAL
1525 Palm Beach Lakes Blvd., West Palm Beach
Florida 33401

KATHY ANN GARCIA-LAWSON, PH.D.
Appellant,
v.
JEFFREY P. LAWSON,
Appellee.

APPELLANT'S INITIAL BRIEF

ON APPEAL FROM THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY
JUDGE RICHARD L. OFTEDEL PRESIDING

Case No.: 502005DR00001269XXXXNB

Respectfully submitted,
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STATUTES AND ORDINANCES

Florida Rules of Appellate Procedure, Rule 9.130

PRELIMINARY STATEMENT

The Appellant, Kathy-Ann Garcia Lawson, was the defendant in a Dissolution of Marriage trial that was ultimately granted, despite her two pending appeals of non-final orders; these appeals were filed pursuant to rule 9.130 of the Florida Rules of Appellate Procedure, which expressly forbids the

lower tribunal from rendering a final order disposing of the cause pending review; therefore, Appellant requests that this court vacate Judge Oftedal's Final Order of Dissolution of Marriage, and further, order that Appellant must be allowed to finally try her constitutional and jurisdictional issues related to the current system of automatically granted petitions for no-fault divorce.

STATEMENT OF THE CASE

Kathy Ann Garcia-Lawson is appealing the final order of the dissolution of her marriage, and requesting a fair trial of the constitutionality issues her case has raised.

STATEMENT OF THE FACTS

Jeffrey Lawson filed a petition for dissolution of marriage on 2/1/05. Appellant Kathy Ann Garcia-

Lawson never consented to the divorce; rather, she objected to it. Appellant has since researched the history of Florida divorce proceedings, and discovered a disturbing, yet hitherto unaddressed phenomenon: that all divorce petitions are granted in Florida, despite any actions taken by the defendant, creating a situation where ALL petitions for divorce end in dissolution and the splitting of the nuclear family. Defendants in these divorce hearings who do not wish the marriage to end have no real recourse—the outcome (the dissolution of the marriage) is determined before the trial commences. Per *Greenwood v. Peacock* (1966), removal of a case is permitted if "it can be clearly predicted by reason of the operation of a pervasive and explicit law that federal rights will inevitably be denied by the very act of bringing the defendant to trial

in the state court." This *Greenwood v. Peacock* outcome would necessitate the removal of Appellants Dissolution of Marriage case from the state courts inasmuch as the outcome is predetermined.

Appellant has worked within the legal system to object to the divorce, challenge this status quo, and to request an evidentiary hearing on the constitutionality of automatically granted no-fault divorces, but she has been repeatedly denied her day in court. Her objective has been to contest the divorce for her marriage's sake, and not to seek financial gain. Appellant's husband's motion for bifurcation was denied (see appendix). Appellant's endeavors have been mislabeled as delay tactics, when in fact the courts' practice of enforcing the unconstitutional Florida Statutory Family/Domestic relation law has inadvertently marshaled litigated protest of such

unconstitutional law. Actions of the Appellant Kathy Ann Garcia-Lawson are not atypical of any other litigated protest of unconstitutional law. Litigated protest of an unconstitutional law can continue on for years, and sometimes decades.

On April 29, 2010, after five years of Appellant's research and work to illuminate the systemic corruption inherent in the current divorce hearings, Judge Richard L. Ofedal entered a final judgment, dissolving the marriage between Jeffrey Lawson and Kathy Ann Garcia-Lawson (see appendix). Appellant had two appeals of non-final orders filed at the time of the final judgment (see appendix).

QUESTIONS PRESENTED

Whether it was unlawful for Judge Richard L. Ofedal to enter a final judgment

on April 29, 2010 for the dissolution of marriage, when Appellant had not one, but two appeals of non-final orders filed (pursuant to the Florida Rules of Appellate Procedure, 9.130)? Whether, according to the 42 U.S.C. Section 1983, Judge Oftedal acted clearly in excess of jurisdiction in issuing this final judgment?

SUMMARY OF THE ARGUMENT

Rather than allowing Appellant object to the divorce and to bring the constitutionality of the automatic granting of no-fault divorces to trial, Judge Oftedal acted in excess of his jurisdiction in issuing final judgment in the dissolution of marriage.

ARGUMENT

The history of Kathy Ann Garcia-Lawson's case is complex, but the nature of this appeal is simple: final judgment was passed even though Rule

obtained from the Church is in violation of our fundamental right to freedom religion. Marriage and private family life represent the very pinnacle, the sum total and consummate whole and totality, of all First Amendment Rights. State licensing and regulation of marriage is not only an outrageous infringement of First Amendment rights, but creates and poses a state monopoly and regulated order of marriage, which constitutes a clandestine taking of liberty by the state through coercive imposition of a contract of adhesion with neither due process of law nor freedom of contract.

The cases *Near v. Minnesota,* 283 U.S. 697 (1931); *Grosjean v. American Press Company*, 297 U.S. 233; 56 S.Ct. 444; 80 L.Ed. 660 (1936); *Schneider v. State*, 308 U.S. 147, 164; 60 S.Ct. 146, 152, 84 L.Ed. 155 (1939); and ***Murdock .v***

Pennsylvania, 319 U.S. 105, 111-115; 63 S.Ct. 870, 874-876; 87 L.Ed. 1292, 1298-1300 (1943) all deal directly with the prohibition of any state licensing of First Amendment activity, and the protection of First Amendment rights against advance restriction. In ***Murdock*** the licensing of a religious solicitor was deemed unconstitutional. Marriage is the only of the seven Catholic sacraments (baptism, confirmation, communion, penance, last rites, holy orders, matrimony) subjected to state regulation and requirements. Any non-harmful sacraments are to remain unobstructed; why is marriage treated differently than the other sacraments, when all sacraments are equally protected from governmental interference under the First Amendment?

(2) Fourth Amendment: Freedom from

and because no one ever really discovers to what degree the state-licensed marriage deprives one of freedom until divorce or dissolution or child custody proceedings begin. The divorce and dissolution "contract of adhesion" also operates in much the same manner of surprise that an ex-post facto law, and discreditable for that reason, and in that the dissolution and divorce procedures tend to wipe out all the rights of certain specifically identified people (divorcing spouses in the state of Florida), the law also suffers from the deficiencies of a bill of attainder/bill of pains and penalties.

All Appellant's attempts to present these clearly present constitutional issues for review have been thwarted. Instead of a fair trial, Appellant has been given an unlawful final judgment.

CONCLUSION

Appellant Kathy Ann Garcia-Lawson requests that this Court VACATE Judge Oftedal's April 29, 2010, Final Order of Dissolution of Marriage between herself and Jeffrey P. Lawson on the grounds that Judge Oftedal's Court lacked all power (i.e. jurisdiction) to enter such a final order under Rule 9.130 of the Florida Rules of Appellate Procedure. Having nullified Judge Oftedal's Final Order of Dissolution, this Court should order that Appellant must be allowed to try all her constitutional and jurisdictional issues in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida.

However, this trial should not be held in Judge Oftedal's Court, nor in any Domestic Relations Court, before Judge Oftedal or any other Judge or Judicial division having primary Domestic

Relations, Dissolution, Child Custody or any other Family Docket responsibility, as all such courts are tainted by a profound conflict of interest in that they could not possibly rule in Appellant's favor without depriving themselves of power and jurisdiction, and hence of their professional employment and official position within the Florida State Judiciary.

Instead, this Fourth District Court of Appeals should order that Kathy Ann Garcia-Lawson's divorce proceedings be delayed until a full, fair, and complete trial of all of her issues under the Federal and Florida Constitutions, including but not limited to her challenge to the existence of State Marital and Dissolution procedure laws as violative of the First Amendment to the United States Constitution and parallel provisions of the Florida State Constitution have been heard.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by mail to Mr. Jeffrey P. Lawson, c/o Steve Marchildon 113 Ashley Court, Jupiter, Florida 33408

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT

I certify that this brief was typed in 14-point Times New Roman font.

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